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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FCP/164425

PRELIMINARY RECITALS

Pursuant to a petition filed March 02, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on March 31, 2015, at Milwaukee, Wisconsin.

NOTE: The record was held open until April 14, 2014, to give the Petitioner an opportunity to supplement the record with additional medical records. On April 10, 2014 the Division of Hearings and Appeals received what appears to be a radiologist's report concerning an MRI of Petitioner's neck/cervical spine. It has been marked as Exhibit 3 and entered into the record.

The issue for determination is whether Community Care, Inc. (Community Care) correctly denied the Petitioner's request for a Personal Emergency Response System (PERS).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

Paul Sokolowski, Ombudsman
State Board on Aging
819 N. 6th Street, Suite 510
Milwaukee, WI 53203

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: No one

Community Care Inc.
205 Bishops Way
Brookfield, WI 53005

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Sometime in January 2015, the Petitioner requested a PERS, which is an alarm that she would wear around her neck. Petitioner made this request because she was concerned that she would be unable to call for help, should she fall down. (Testimony of Petitioner; Exhibit 2)
3. The PERS costs \$30.00 per month. (Testimony of Petitioner)
4. On January 22, 2015, Community Care, Inc., the Petitioner's Managed Care Organization, denied the Petitioner's request. (Exhibit 1)
5. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and appeals on March 2, 2015. (Exhibit 1)
6. Petitioner is 64 years old and has complained of right arm numbness and dizziness for about one month. (Exhibit 3)
7. Petitioner owns a cell-phone which has 911 pre-programmed into a special button. The phone is small enough for the Petitioner to keep in her pocket. (Testimony of Petitioner; Exhibit 2)
8. The facility in which the Petitioner lives has staff that is required to check on residents at both 10:00 a.m. and at 10:00 p.m. (Exhibit 2; Testimony of Petitioner)

DISCUSSION

The Petitioner filed a request for fair hearing because she would like a PERS, but Community Care denied her request for that service.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. State v. Hanson, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for assistance, the applicant has the initial burden to establish he or she met the application requirements. Estate of Gonwa ex rel Gonwa v. Wisconsin Dept. of Health and Family Services, 265 Wis.2d 913, 668 N.W.2d 122, 2003 WI App. 152. Thus, Petitioner bears the burden to prove that she meets the criteria for approval of a PERS.

The Family Care Program is a subprogram of Wisconsin's Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) and *Wis. Admin. Code* §DHS 10.41. The CMO, in this case Community Care, implements the plan by contracting with one or more service providers.

Wis. Admin. Code DHS 10.41(2) states that:

Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n (c)

and ss. 46.275, 46.277 and 46.278, Stats., the long-term support community options program under s. 46.27, Stats., and specified services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

Emphasis added

Wis. Admin Code DHS 10.44(2)(f) states that the CMO, in partnership with the enrollee, shall develop an individual service plan for each enrollee that meets all of the following conditions:

1. Reasonably and effectively addresses all of the long-term care needs and utilizes all enrollee strengths and informal supports identified in the comprehensive assessment under par. (e) 1.
2. Reasonably and effectively addresses all of the enrollee's long-term care outcomes identified in the comprehensive assessment under par. (e)(2) and assists the enrollee to be as self-reliant and autonomous as possible and desired by the enrollee.
3. Is cost-effective compared to alternative services or supports that could meet the same needs and achieve similar outcomes. ...

Wis. Admin. Code DHS 10.44(2) (e) 1 and 2, requires Petitioner's health and safety to be considered in determining Petitioner's strengths and long term goals. Further, the Wisconsin Administrative Code states that the CMO, through its case management team, shall monitor the health and safety of the enrollee. Wis. Admin. Code §DHS 10.44(2)(d)3, *emphasis added*.

Community Care does not appear to dispute the fact that the Petitioner is at risk of falling and that in order to assure Petitioner's health and safety, the Petitioner requires monitoring and access to a means to call for help, should she fall and need assistance. However, it is Community Care's position that Petitioner does not need a PERS to ensure her safety, because it is duplicative of services she already has. Specifically, the Petitioner has a cordless phone; she also has a cell-phone that she keeps with her and the facility in which she lives checks on her twice a day.

Petitioner argues that she needs the PERS to be safe in her home, because she suffers from dizzy spells and is at risk of falling. Petitioner argues that the cell-phone is not sufficient, because she does not always have a pocket and because it is not always possible for her to carry a phone, if she using her hands for other things, like using her cane. The Petitioner testified that she uses both hands on her cane and walks with it in front of her for stability.

The argument that the twice per day check is an appropriate replacement for a PERS is without merit. If Petitioner falls sometime during the 12 hours between checks and is unable to use a phone, she would be without help for an extensive period of time.

The argument that a cordless phone is a sufficient replacement for a PERS is also without merit, as it is not always practical to carry a cordless phone around, especially if one is using one's hands for something else, like walking with a cane.

The real issue here is that Petitioner has a cell-phone that is small enough to fit in her pocket and that is easy enough to use in an emergency, since it has a pre-programmed button to call 9-1-1. As such, it is unclear how a PERS would be any different in function or use. The only apparent difference discussed at the hearing is that the PERS hangs from a lanyard that is worn around the neck.

Petitioner's argument that she does not always have a pocket available is not entirely without merit. However, a more cost-effective option that Community Care should have offered was to purchase a lanyard

for Petitioner's flip-style cellphone, if it accommodates one, or to provide the Petitioner with a small pouch that she can carry around her neck, like those used by travelers to conceal their money and passport under their shirts. Indeed, this would be a relatively nominal, one-time purchase as opposed to paying \$30.00 per month to maintain PERS services.

Petitioner should make a formal request for such an item. If Community Care denies that request, Petitioner will have to file a NEW request for fair hearing.

Based upon the foregoing, it is found that Petitioner's request for a PERS does not meet approval criteria at this time.

CONCLUSIONS OF LAW

Community Care correctly denied the Petitioner's request for a PERS system.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of April, 2015.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on April 15, 2015.

Community Care Inc.
Office of Family Care Expansion